

ZUCKERMAN
P.L. II

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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-190242

DATE: March 8, 1978

MATTER OF: Truland Corporation

DIGEST:

Where invitation for bids may be read to require bidders 1) to include spare parts in their base bids; 2) to include spare parts in their base bids and separately state price for spares for informational purposes; or 3) to provide information quote only, specification is ambiguous, and where, as a result of bidder's attempt to comply with the requirement it cannot be determined with certainty which bid is low, cancellation of solicitation is proper.

This is a protest over the decision of the United States Army Corps of Engineers to cancel and readvertise invitation for bids (IFB) No. DACA31-77-B-0056 because of what the contracting officer claims are "vague and ambiguous" terms in the IFB which have "prevented the Government from clearly communicating its actual needs to prospective bidders."

The IFB, for the procurement and installation of a system to monitor and control air conditioning, heating and electrical systems at 28 buildings at Dover Air Force Base, Delaware, contained the following provision in issue here:

"11.11.4 FID [Field Interface Devices]
Spare Parts: As a part of his bid, the contractor shall price one complete set of spare parts for the FID. The spare parts inventory shall include, without being limited to, the following items:

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- a. One set of FID power supplies.
- b. One set of address decoding modules.
- c. One set of timing modules.
- d. One digital output module.
- e. One digital input module.
- f. An analog input module including the ADC logic.
- g. One set of communication interface modules."

The Corps states the Air Force did not intend to acquire a set of FID spare parts at the time of the initial purchase and that FID spare parts prices were requested for informational purposes only.

Six bids were received on September 13, 1977. The protesters' bids were:

Truland Corporation (Truland)	\$663,181.00
Additive No. 1	100,366.00
	<u>\$763,547.00</u>
Computer Sciences Corporation	
(CSC)	\$718,477.00
Additive No. 1	50,016.00
	<u>\$768,493.00</u>

The remaining four bids were higher.

In addition to the price bid on the bid form, Truland's bid contained the following statement typed on its letterhead:

"In compliance with the requirements of Section 11.11.4, we are pleased to quote the sum of SEVEN THOUSAND THREE HUNDRED DOLLARS (\$7,300) for one complete set of spare parts for the FID."

CSC protested to the contracting officer that while it was offering spare parts as a part of its base bid, spare parts were not included in Truland's base bid.

It is apparent that the addition of the \$7,300 "quoted" for the FID spare parts to the Truland bid would make CSC the low bidder for the base bid plus

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additive No. 1. However, Truland claims that the \$7,300 was included in its base bid, but was separately stated for informational purposes only to comply with its understanding of IFB paragraph 11.11.4. As asserted by Truland:

"[The bid] form provided only one line for a base bid and made no provision for separate pricing of spare parts. The form, when viewed in conjunction with the requirement that the contractor 'price' spare parts as 'part of his bid' could only lead a reasonable bidder to conclude that the price for a set of spare parts should be included in the one place available on the bid form, the base bid item. * * * Yet, the specifications clearly called for a 'price' and this must certainly mean that the Corps wanted to know [the] amount * * * included in [the] lump sum bid for the FID spare parts set."

As support for its position that the "quote" was for information purposes only, Truland notes that the "quote" was included on a separate sheet accompanying the bid which also listed, for information purposes, prior installations of a similar nature completed by the bidder.

None of the other bidders separately stated the spare parts "price" and both CSC and Truland argue that paragraph 11.11.4, supra, is not ambiguous and required the FID spare parts price to be included in the base bid. The protesters part company on this issue only with regard to whether the IFB requires that the "price" be separately stated for information purposes.

We agree with the Corps that the IFB clause could reasonably be read in either of two ways--that a bidder "was merely required to indicate what his price would be for one complete set of spare parts in the event the Government desired to purchase same in the future, or that the price for the spares was to be included in the base price." We believe it is also possible to read the provision as Truland claims it

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did, i.e., that the spares were to be included in the base bid and that an information price was required.

However, we do not believe that Truland can avoid the ambiguity in its bid created by the language "we are pleased to quote" which it employed to convey the "information" it now asserts it intended, by merely claiming the IFB required that information. Even though Truland's interpretation of the clause may not be unreasonable, it is, as asserted by the Corps, "impossible to determine [from the face of the bid] whether or not Truland intended to include a price for spare parts in its base bid, or whether such price was omitted from its base bid and was merely included * * * for informational purposes." The fact that the spare parts quote was on a separate sheet which contained other non-price information does not eliminate the ambiguity. To permit Truland the option of explaining the intent of its bid after opening, would be contrary to sound procurement policies. See J. & H. Smith Mfg. Co., Inc., B-184221, February 6, 1976, 76-1 CPD 78.

As a result of the "inartful and ambiguous" manner in which Section 11.11.4 was worded, the Corps was confronted with the dilemma of determining whether to cancel the invitation and readvertise the requirement with a clearly expressed statement of its needs, or trying to determine which of the bidders was low and entitled to award. Although there is no question that the Government would receive its basic minimum requirements under a contract awarded as a result of this IFB, i.e., an installed energy control and monitoring system, the fact remains that it cannot reasonably be determined which bidder was low and entitled to award.

Under these circumstances, cancellation of the solicitation is proper and the protests are denied.

R. F. Kilian
Deputy Comptroller General
of the United States